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Supreme Court, U.S.
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No. 94-316

In The

Supreme Court of the United States

October Term, 1994

In re ANTONIO CESAR BUENO,

Petitioner,

vs.

CITY OF HUNTINGTON PARK, ERIC AULT, ANTONIO LUNA, MICHAEL PERRY, ARTHUR DE CLERCQ, STEVE CASTRO, AND JORGE ROJAS,

Respondents.

On Petition For Writ Of Certiorari To The California Court Of Appeal, Second Appellate District, Division Two

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

1. Whether grounds exist for granting the Petition.

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RESPONDENTS' BRIEF IN OPPOSITION

I. STATEMENT OF THE CASE[1]

This Petition is taken from a final judgment disposing of all issues between the parties. The Petition is essentially concerned with the Superior Court's March 30, 1993 disposition of Petitioner's Motion for Attorney's Fees pursuant to 42 U.S.C. § 1988.

[1] Respondents accept petitioner's statement of jurisdiction and the statutes at issue as well as petitioner's citations of opinions below.

On May 17, 1989, Petitioner commenced this civil rights action following his arrest and acquittal on charges of violating California *Penal Code*, § 647(f). The City of Huntington Park and six of its police officers were charged with various civil rights violations and compensatory and punitive damages were sought.

The trial in this matter resulted in defense verdicts for all defendants save two and modest compensatory damages award in the amount of $35,000.00. Subsequently, the jury found in favor of all defendants on the most serious claims of excessive force, malicious prosecution, and assault and battery.

Following the trial, Petitioner sought a substantial fee award in the amount of $114,656.00. Although Petitioner's entitlement to a fee award was not challenged by respondent, the amount being sought was disputed. Following final briefing and argument, the trial court granted the Petitioner's motion and awarded fees in the amount of $30,000.00.

On April 9, 1993, Petitioner filed a Motion for Reconsideration of the court's award which was opposed by Respondents on April 19, 1993. The court heard the Motion for Reconsideration on April 27, 1993 at which time the trial court reiterated the basis of the award of attorney's fees in the amount of $30,000.00 while acknowledging that Petitioner's Motion for Reconsideration was not based on a new set of facts.

Petitioner thereafter unsuccessfully appealed to the California Court of Appeal.

II. SUMMARY OF ARGUMENT

Petitioner subsequently sought rehearing before the Court of Appeal and thereafter, review by the Supreme Court of California. Each of these requests were denied. Clearly, there is not a case which has received more of a federal law affirmation.

As he has done continuously, Petitioner fails to acknowledge that deviations from the lodestar do not suggest an abuse of discretion. A court need not discuss each of the guidelines set forth in *Kerr v. Screen Extras Guild*, 526 F.2d 67 (9th Cir. 1975) as long as the court articulates sufficiently how it made its determination (*Queseda v. Thomson*, 850 F.2d 537 (9th Cir. 1988), while also recognizing that this does not require detailed calculations when making reductions in the lodestar for interrelated unsuccessful claims. *Hensley v. Eckerhart*, 461 U.S. 424 (1941) and *Gates v. Deukemejian*, 987 F.2d 1392, 1404 (9th Cir. 1992).

Thus, the decision of the California courts were not based on the complexity of issues alone as Petitioner claims (Petitioner's Petition for Writ of Certiorari, hereinafter "Writ" at page 17), but was in fact a function of the time spent on the unsuccessful claims as they related to the successful claims, necessarily allowing a lodestar reduction without the need for detailed calculations. The opinion of the Court of Appeal clearly sets forth the factors leading to its affirmation of the trial court's decision which are enumerated on pages 28, 34, and 35 of Petitioner's Writ.

Furthermore, while the court should not look to an award of attorney's fees in a primary action when considering the determination of fees in a later entirely distinct action, that is not the issue which was before the Court of Appeal or which is presently before this court.

III. REASON FOR DENYING THE PETITION

The Petition itself demonstrates the reasons for the denial. First there is no dispute that the trial court faithfully enforced the Petitioner's statutory right to a fee award (Writ at pgs. 5 and 29). Next, there is also ample acknowledgment that the trial court carefully weighed all of the factors *and* arguments which were properly presented in connection with the application. Finally, there is by concession an articulation of the reasons underlying the trial judge's fee award.

This Petition arises not out of concerns of federalism, but rather out of a trial attorney's dispute with his trial judge concerning the amount of fees to which he was entitled. This clearly is not worthy of further review here or elsewhere.

Petitioner has asked this court to review this case essentially arguing that the Court of Appeal applied a "success ratio" to affirm a trial court's decision. Petitioner argues that this is prohibited by federal law. Petitioner also argues that the Court of Appeal affirmed the trial court's decision without articulating its reasons but rather did so based on "unspoken reaosns". [Writ at page 23].

The result of Petitioner's request is that he is asking this court to believe that since Petitioner was the "prevailing party" in a civil action against Respondents, Petitioner is ipso facto guaranteed an award of attorney's fees based on the lodestar calculation provided by Petitioner's counsel. Respondents submit that this reasoning is patently circuitous and thus gives rise to the pivotal underlying issue to be considered, i.e., whether the *degree of success obtained by a litigant is the critical factor in determining the reasonableness of an award of attorney's fees. Farrar v. Hobby,* 113 S.Ct. 566 (1992). It is on this basis that it is further pertinent to point out that the trial court did not accept the plaintiff's lodestar at face value and considered plaintiff's victory de minimis. As Petitioner points out, this in and of itself is a basis for determining an award of reasonable attorney's fees without making specific arithmetic adjustments. (Petitioner's Petition for Rehearing before the California Court of Appeal at pg. 1-Exhibit "A" to Appendix).

IV. CONCLUSION

For reasons already made clear, summary remand is not applicable here.

Each and every case cited by Petitioner in his Writ references case law decided prior to the decision of *Farrar v. Hobby,* supra. As a consequence of that most recent decision, the trial court and the Court of Appeal relied on numerous factors which, in their totality, exposed a de minimis victory for the plaintiff. It is for this reason, as well as Petitioner's failure to recognize the "degree of success" as being the most critical factor in determining

an award of attorney's fees, that Petitioner must necessarily rely on accusations and innuendoes referencing a so-called "suspicion of hostility to federal rights". (Writ at pg. 23).

DATED: September 19, 1994

Respectfully submitted,

NORMAN J. WATKINS
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App. 1

Exhibit A

2nd Civil No. B076029

IN THE COURT OF APPEAL FOR
THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CESAR ANTONIO BUENO,

Appellant,

vs.

CITY OF HUNTINGTON PARK, et al.,

Respondents.

Appeal From The Superior Court For
The County of Los Angeles

Honorable Robert J. Higa, Judge

L.A.S.C. Case No. SEC 74315

PETITION FOR REHEARING

CRC 27

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* * *

I

***UNLESS THE PLAINTIFF'S VICTORY IS TECHNICAL, DE MINIMUS OR PYRRHIC,* IN DETERMINING REASONABLE ATTORNEYS FEES, TRIAL COURTS MUST MAKE SPECIFIC FINDINGS WITH RESPECT TO THE LODESTAR BEFORE MAKING DOWNWARD ADJUSTMENTS; A TRIAL COURT'S FAHLURE TO COMPLY WITH THIS FOUNDATIONAL REQUIREMENT CANNOT BE AVOIDED TO AFFIRM THIS RULING**

When setting a fee, the district court must first set the presumptive lodestar figure. *Cunningham v. County of Los Angeles*, 879 F.2d 481, 484 (9th Cir. 1988). (*Cunningham*), *cert. denied*, 493 U.S. 1035, 110 S.Ct. 757, 107 L.Ed.2d 773 (1990). This is done 'by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate.' *Id.* Next, in rare cases, the district court may adjust the 'presumptively reasonable' lodestar figure based on the factors listed in *Kerr v. Screen Extras Guild*, 526 F.2d 67, 69-70 (9th Cir. 1975) (*Kerr*), *cert. denied*, 425 U.S. 951, 96 S.Ct. 1726, 48 L.Ed.2d 195 (1976), 'that have not been subsumed in the lodestar calculation.'

* * *